DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0572P Gross Income Tax Calendar Year 1995

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ISSUE(S)

I. <u>Tax Administration</u> – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer incorporated under the laws of Delaware performed marketing services and its personnel solicited orders in Indiana. Upon audit, it was discovered that the taxpayer failed to report gross service income at the high rate of tax.

Taxpayer, in a letter dated September 9, 1998 protested penalties assessed due to an interpretation of the law. The company merely acted as a payroll conduit for a partnership and the monies collected were 100% paid out as compensation. Because of this arrangement, the company did not believe that it had a gross receipts tax exposure.

I. **Tax Administration** -Penalty

DISCUSSION

Taxpayer was assessed a negligence penalty for failure to report high rate gross income. The Indiana Code and Regulations are clear regarding the issue. IC 6-2.1-2-7 states:

- (a) A taxpayer must report separately, on a return filed pursuant to IC 6-2.1-5, gross income that is subject to different rates of taxation under this chapter.
- (b) A taxpayer must separate, on his records, gross income that is subject to different rates of taxation under this chapter.

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(c) If a taxpayer fails to separate his gross income on his returns or records as required by subsections (a) and (b), then the taxpayer's entire gross income is subject to the higher of the rates provided by IC 6-2.1-2-3 for a particular taxable year.

Taxpayer states the deficiency was not a result of negligence but an interpretation of the law. Taxpayer's argument states that it has always filed its Indiana returns and tax payments in a timely manner and the underpayment was not due to any willful neglect of the law.

A review of the audit indicates the taxpayer failed to report gross receipts, the issue, which is clear in the Indiana Code and Regulations.

The department finds that a negligence penalty is proper.

FINDING

Taxpayer's protest is denied.